

INSURERS WIN OUT

Verdict Rendered After a Long Trial.

The Alliance Assurance Co. won the verdict in the suit brought against it by Kwong Lee Yuen & Co. on a policy insuring certain property in Chinatown which was destroyed by the fire that the Board of Health started on January 20, 1900. After a trial lasting four days the jury in Judge De Bolt's court retired five minutes past four yesterday afternoon, returning at five o'clock with a verdict for the defendant, signed by John Kidwell, foreman. Bailou & Marx and Anderson represented the plaintiff, and Robertson & Wilder the defendant.

WOODBIDGE SENTENCED.

Frank I. Woodbridge pleaded guilty to the indictment for embezzlement, and Judge Gear sentenced him to imprisonment at hard labor for six months. The indictment was found on August 19, 1902, charging Woodbridge with embezzling \$25 from Mr. Phillips & Co.

Attorney General Andrews asked for a light sentence, specifying six months as such when asked by Judge Gear to state his meaning of the term. It is understood that the request came from M. Phillips & Co., out of sympathy for defendant's relatives and regard for his own poor health. Other indictment against Woodbridge for larger amounts are pending but will probably be abandoned by the prosecution. A plea of not guilty to these was rendered.

Woodbridge, before his shortage in the Phillips concern was discovered in 1902, had disappeared in a steamer for the Orient. He was a through passenger for San Francisco in the transport Logan ten days ago, and his presence on board having been discovered he was arrested under the indictments of two years ago.

NEW TRIAL FOR MURDER.

A start was made with the new trial of Yoshiaga Dengiro for murder before Judge Gear yesterday morning. The examination of jurors for cause exhausted the panel in the forenoon and a special venire for 49 men was issued, returnable at 10 o'clock this morning. M. F. Prosser represents the Territory, and Henry Hogan the defendant.

Dengiro was indicted for murdering his stepfather at Kapaa, Kauai, May 2, 1902. He was tried and convicted in the Third Circuit Court at Lihue, and Judge Hardy sentenced him to death. For error in charging the jury a new trial was granted by the Supreme Court and the venire was changed to the Circuit Court.

AN EJECTMENT CASE.

Judge Robinson was engaged yesterday with the trial of First National Bank of Hawaii vs. J. D. Gaines, J. M. McChesney and Alice M. McChesney, ejectment. The trial will be resumed at 9:30 this morning. Smith & Lewis for plaintiff; Bailou & Marx and R. B. Anderson for Gaines, and J. W. Cathcart for the McChesneys.

The jury consists of J. J. Sullivan, Arthur Johnstone, Charles P. Osborne, Patrick Ryan, James Armstrong, John R. Moniz, Harry A. Wilder, Wm. F. Erving, Norman Watkins, Lewis C. King, James Nott Jr., Arthur L. Soule.

COURT NOTES.

Mrs. Kelesia Mary Puuk was appointed guardian of her daughter, Mary Kahai, by Judge Robinson.

Defendant in the suit of Pang King Chee et al. vs. A. Morimoto by his attorney, E. M. Watson, has discontinued his appeal from the District Court of Honolulu.

AS TO HANA PLANTATION

E. A. Mott-Smith, receiver of Hana Plantation Co., has filed a preliminary report before Judge Robinson. It occupies 64 pages of typewriting. He states that he has arranged with M. S. Grinbaum & Co. to finance his receiver's paper, on the following approximate estimate of cost:

August, 1904	\$621.91
September	9,959.00
October	9,959.00
November	12,959.00

The outstanding bond indebtedness of the company on September 22, 1904, as shown by the books of the company, is \$160,000. The amount of capital stock paid in, as shown by the books of the company, on September 22 was \$427,717. The present authorized capital is \$5,000,000 divided into 50,000 shares of the denomination of \$100 each. The outstanding account due agents totals up \$873,428.50.

In conclusion the receiver recommends that the plantation be conducted along the lines set forth in the report pending settlement of the issues in the case—that of Edmund Greenbaum and Charles Altschul, trustees, vs. Hana Plantation Co., M. S. Grinbaum & Co., Ltd., and Union Trust Co. of San Francisco. "There are certain losses," the receiver adds, "held by the Hana Plantation Co. which are of no value to the plantation. I respectfully request instructions as to the payment of rent on such losses."

The five staple lands of the plantation are approximately 5000 acres and leased lands of which 2000 acres are approximately 10,000 acres.

GRAND JURY ENDS WORK

Exclusion Act Matter Decision and Other Business.

By last night the Federal grand jury had practically completed its investigations of cases presented to it. Its final report will be rendered before Judge Dole today. Members of the body from the other islands will therefore be able to leave for their homes in today's steamers.

District Attorney R. W. Breckons has won the admiration of the grand jurors by the able manner in which he has conducted the business. He had the United States cases so well prepared that there was no time wasted. If a witness was lacking for the moment when one case was called, Mr. Breckons at once substituted another case. There was consequently a steady presentation of matters for investigation.

COURT BUSINESS.

On the roll call of trial jurors yesterday E. E. Hartman and T. W. Hobson failed to answer and attachments were issued to bring them into court. After a number of excuses had been granted, the available panel was reduced to seven men. A special venire was issued for eighteen men returnable today.

The sentence of John Samon, who pleaded guilty to illicit liquor selling, was continued till today.

Captain William Treanor, master of the American schooner M. Turner, was arrested on Kauai by Marshal Hendry on a bench warrant pursuant to indictment for smuggling and selling liquor at Kahului on a former trip. He gave a bond yesterday in the sum of \$1000. The Turner is at Elele from Newcastle, N. S. W., with coal.

Adachi, charged with perjury, whom Marshal Hendry brought back from Japan under extradition proceedings, is to be tried this morning.

EXCLUSION ACT CASE.

Judge Dole yesterday rendered a decision in the Pang Kun habeas corpus matter, in which the father of the subject contended that the boy was unlawfully prevented from landing. His conclusion reads:

"It is well settled by repeated decisions that the Federal Courts have no authority to review the decisions of Immigration officers made under authority of the statute affecting the right of aliens to enter the country."

"The Immigration officer was given constitutional authority by statute to determine the question of the right of Pang Kun to enter the country, subject to his right to appeal to the Department of Commerce and Labor. He has decided the question against such right. The said Pang Kun has had his appeal to the Department of Commerce and Labor, and the decision of the Immigration officer has been confirmed, and such decision is made final by the statute. Unless it should appear that Pang Kun was deprived of a hearing under the statutes referred to, or that the Immigration officers had in some way failed to conform thereto, so that the question had arisen in the case whether he had received the benefit of due process of law in the trial of his claim that he had a right to enter the country, this court would have no jurisdiction to interfere."

"I find no basis for interference in the facts alleged to the petition and the demurrer is therefore allowed and the petition dismissed. The Marshal is ordered to deliver the said Pang Kun to the respondent for such further proceedings as are required by law."

F. E. Thompson and C. F. Clemons, petitioners; J. J. Dunne, Assistant District Attorney, for the Immigration officers.

The inventory of mill and other buildings, plantation equipment, etc., takes several pages. For the crop of 1904-05 there are 535 acres plant cane, 375 acres short first ratoon, 150 acres short second ratoon, 71 acres long ratoon, a total of 1131 acres. For the 1905-06 crop there is a total in growth of 172.50 acres.

Mr. Mott-Smith appointed E. Worthington as his personal representative on the plantation at a salary of \$225 a month, H. C. Ovenden as bookkeeper at \$150 and P. S. Dunn as engineer at \$170.

The trial balance sheet made on August 25, 1904, shows a deficiency of \$121,954.04, making the account balance at \$1,289,956.81.

The pay roll, when the receiver took charge, showed eighteen persons classified as skilled labor, with pay ranging from \$225 to \$30 a month, and 255 men and 22 women classified as unskilled labor, with wages ranging from \$1 to 40 cents a day.

The report of the receiver is set for hearing on Saturday, October 25, at 9:30, before Judge Robinson.

DEPUTY ATTORNEY- GENERAL DOYLE

Chester Doyle left last night on the steamer Nueua for Kauai to prosecute, on behalf of the Attorney General's department, the persons responsible for the two murders committed on the Hawaiian Islands and reported yesterday by wireless telegraph. Sheriff Conroy of Kauai, who has been here in attendance on some court cases, left in the same steamer.

The men reported previously as having been found hanging in a tree in Hilo district moved to Hana last night. Chinese named Young Wan.

MAUI GRAND JURY ROASTS THE POLICE

Alleges the Hiring of Habitual Criminals as Spies--Ashford Conducts Government Cases--Political and Personal.

WAILUKU, Maui, Oct. 15.—Late this afternoon the grand jury presented their final report to Judge Kepoikai as follows:

REPORT OF THE GRAND JURY.

"We, the undersigned, grand jurors of your Honorable Court, beg to make our final report as follows:

"We have investigated fifteen (15) cases, and have found ten (10) true bills, as follows:

"(1) True bills found and indictments presented as follows: Tsue, embezzlement of more than one hundred dollars; Mitama, selling liquor without license; Papa Kahauliello, mayhem; Manuel Chase, assault and battery with a weapon dangerous to life; Sasake Kekichi, embezzlement; Roke Posano, larceny first degree; Tai Sing and Ah Mai, burglary first degree; Joseph Kalia, embezzlement; Kaahue Ioane and Kalia, assault and battery.

"(2) In the following cases, after due investigation, we have declined to indict, viz: Y. Sumisaki, selling liquor without license; Ah Tong et al, gaming at Kahului; Ah Lo, two cases, selling liquor without license; Aka, selling liquor without license.

"We have had several cases before us in which the police department has figured. We are much impressed with the methods resorted to by them in obtaining testimony in liquor cases, having no regard, in many instances, as to the character of their paid spies. In two cases before us, we feel that the spies were perjurers, and one spy admitted having been in jail three times, for various offenses.

"We have heard much evidence, so much as to make it convincing to our members, that the police department are lax in their methods, that many of the officers are inefficient; in fact, we think there should be a general shaking up of the department.

"Instances have come to our knowledge of the divulgence by members of grand juries of the proceedings had before them. Without a desire to mention the names of offending members of those bodies, we respectfully recommend that all grand juries and jurors be so admonished by the court, as to reprove past, and prevent future violations of the secrecy which should attend all proceedings before the grand jury.

"We further recommend that the clerk of this grand jury, Mr. T. M. Church, be paid a reasonable sum in addition to his per diem as a grand juror, for his faithful and arduous services as clerk of this body.

"We thank the court and its officers for the courtesies extended to the members of this grand jury during our labors.

"And having completed our duties, and given our best attention to all the matters submitted to our consideration by the court, or by the Deputy Attorney-General, we respectfully ask that this grand jury be now discharged for the term.

"Dated at Wailuku, Maui, this 15th day of October, 1904."

OPENING OF TERM.

The October, 1904, term of the Second Circuit convened on last Wednesday morning at 10 o'clock, Hon. A. N. Kepoikai presiding.

Those present were: C. W. Ashford, Deputy Attorney General, prosecuting during the term; Edmund H. Hart, clerk; Chas. Wilcox, Hawaiian Interpreter; Chang Kim, Chinese Interpreter; Judge W. McKay, W. F. Crockett, D. H. Case, J. L. Coke, John Richardson, A. G. Correa, J. M. Vivas.

After the opening of the court at 10 o'clock the court delivered its charge to the grand jury.

THE COURT'S CHARGE.

"Gentlemen of the Grand Jury:

"We are here again in obedience to our system of laws. As a grand jury of this court, you have jurisdiction of offenses against the laws of the Territory of Hawaii committed within the Second Judicial Circuit, or within the jurisdiction of this court. Persons charged with the commission of crimes, the punishment for which is infamous, will receive your attention. All felonies belong to the class of infamous crimes.

"You are required to examine all matters submitted to you by the court, or the attorney in charge of the prosecution at this term, and other matters that may come to your knowledge in the course of your investigation, or from your own observations, or such as may be disclosed by your members, and it will be your duty to investigate without fear or favor all such crimes.

"The matters for your investigation at this term of court will be submitted to you by the prosecuting attorney. No indictment can be found nor any presentment be made without the concurrence of at least twelve of your members.

"The court alone can excuse a grand juror, and although the grand jury may excuse temporarily one or more of its members, there must be at least sixteen of you present at each sitting.

"Your deliberations must be absolutely secret, and any one of you who discloses anything that takes place within your council subjects himself to punishment. Each witness and interpreter should be admonished by you to keep absolute and inviolable in their presence your council.

"You are not to bring the person charged with the crime before you for examination, but you may permit him, if he wishes to do so, on his own volition. You must first warn him that his statement may be taken against him. You must be thoroughly satisfied that he understands what he is doing, and that he does it voluntarily.

"It is within your power to investigate alleged irregularities in public offices and other matters of public nature, and the different departments of the government within the jurisdiction of this court may be matters for your investigation when brought to your attention by the prosecuting attorney.

"You have the process of this court in compelling the attendance of witnesses in all matters, and if in any matter there is a refusal to appear before you to testify, you should at once apply to the court, and proper steps will be taken to assist you.

"The prosecuting attorney will wait upon you to assist you in all matters you may require his services or advice. An officer will be placed at your service.

"I appoint C. B. Wells, Esq., as your foreman. You will select your own secretary from among your members."

The following are the members of the grand jury: C. B. Wells, foreman; Geo. Baldwin, T. M. Church, E. Daniels, A. Douce, R. E. Ford, A. Fernandez, Jr., A. Guernier, W. B. Hardy, C. K. Haul, Jas. Kawalo, Geo. Maxwell, L. K. Tilton and J. Miranda.

PROGRESS OF BUSINESS.

The following cases have been disposed of since the opening of the court: Territory of Hawaii vs. Y. Sumisaki. Selling liquor without a license. Richardson for defendant. Nolle pro.

Territory of Hawaii vs. Yak Man and John Mahu. Violating Sec. 1448 of the Penal Laws. Coke for defendants. Nolle pro.

Territory of Hawaii vs. Ah Tong and five others. Gaming. Ball forfeited.

Territory of Hawaii vs. Akima et al. Gaming. Vivas for defendants. Ball forfeited as to Hirochigi and nolle pro, entered as to other defendants.

Territory of Hawaii vs. Ah Lo (two charges). Selling liquor without a license. Coke for defendant. Nolle pro.

Territory of Hawaii vs. Aka. Selling liquor without a license. Coke for defendant. Nolle pro.

Territory of Hawaii vs. M. Cabral. Burglary first degree. Vivas for defendant. Defendant discharged on motion of the Deputy Attorney General.

Territory of Hawaii vs. D. Kaomea. Larceny second degree. Vivas for defendant. Nolle pro.

Territory of Hawaii vs. Funaoka. Assault and battery. Defendant pleads guilty. Fined \$10, costs remitted.

J. A. Ahong vs. Haiku Sugar Co. Trespass on the case. Continued until next term by stipulation. Kinney, McClanahan & Cooper for plaintiff; Smith & Lewis for defendant.

S. Ahmi vs. L. M. Baldwin et al. Damages. Coke and Watson for plaintiff; Magoon for defendants. Continued until next term by agreement of counsel.

W. L. Hardy vs. Hana Plantation Co. Coke and Watson for plaintiff; Holmes & Stanley for defendant. Continued until next term.

Melesaki How On vs. Amoe Ah Ho et al. Ejectment. Stricken from the calendar.

Rosale Lyons vs. J. W. Kalua, Ejectment. Coke for plaintiff; Richardson and Vivas for defendant. Continued for the term.

Macfarlane & Co. vs. William White, Assumpsit. Coke for plaintiff, Correa and Creighton for defendant. Defendant confesses judgment.

Hackfeld & Co. vs. William White, Assumpsit. Coke for plaintiff; Creighton and Correa for defendant. Defendant confesses judgment.

The grand jury yesterday filed a partial report, finding four indictments, viz: Territory vs. Manuel Chase, assault and battery with a weapon; Territory of Hawaii vs. Sasake Kekichi, embezzlement; Territory of Hawaii vs. Roke Posano, larceny first degree, and Territory of Hawaii vs. Tsue, embezzlement.

It is expected that the grand jury will make their final report this afternoon or evening.

The trial of the case of the Territory vs. Tsue was begun today before a jury and has been continued until Monday morning at 10 o'clock, owing to Mr. Ashford's engagement before the grand jury as Deputy Attorney General.

OTHER NOTES.

Lieut. Sam Kellini entertained the Republican candidates for Senators and Representatives at his home at Wailuku yesterday (Friday) afternoon prior to his departure for Kona, Hawaii. Those present were: George Copp, John Kalini, M. K. Nakulua, A. N. Haystack, Philip Pali, A. G. Correa, George Cooper, F. W. Beckley, W. P. Hala and John Kiri.

A severe shock of earthquake was felt throughout Maui on last Friday morning at about seven minutes to four o'clock.

Prince Capiti, the Republican nominee for Delegate to Congress, came over to Wailuku today accompanied by Judge Monahan, D. Kalauchuan, Jr., and Stephen Duma, and a Hawaiian canoe meeting has been arranged to take place at the Wailuku wharf at 10 o'clock, at which time and place speaking will be made by Prince Capiti.

LOST BOY WAS FOUND

Movements of Political Leaders--Teachers' Union Meets.

HILO, Oct. 14.—The little Galician boy who was lost in the woods at twenty-two miles, Olan, last week, was found by his father and uncle about a mile and a half from his home on Thursday. While climbing over a log the little fellow dropped his cane knife which struck his foot cutting a deep gash. He could go no further owing to exhaustion due to exposure and loss of blood. He made a nest in the ferns and lay there until found by his father. He was carried to the station at Glenwood where Mr. Jenkins and Mrs. Fuhr took charge of him. The latter was stopping at the station for a week recuperating her health and was there when the boy was brought in. She immediately took charge of him and nursed him until Saturday when she brought him to the Hilo Hospital taking care of him until he was taken to his home by his father on Tuesday. He was in a weakened state but no doubt was felt as to his ultimate recovery.

TEACHERS' UNION.

The Hilo Teachers' Union held its first quarterly meeting of the school year last Friday morning at the Union School. There were present thirty-seven members and sixteen visitors. President Levi C. Lyman presided, and Rev. C. E. Shields opened the exercises with prayer. The following new officers were elected: President, L. C. Lyman; vice-president, Miss Ward; secretary-treasurer, Wm. McCluskey. The program, which proved to be a most entertaining one, opened with a class exercise of free callisthenics, executed by twelve girls from the upper grades of the Union School under the direction of Principal C. O. Smith. Mrs. Tracy followed with a class of little tots, who played several language games, designed to bring into action the different human senses.

With a fifth grade class from Miss Pomeroy's room, Miss Florence Hill illustrated her method of teaching physiology. W. H. Smith read a treatise on Philology.

VARIOUS ITEMS.

A Japanese charged with striking a Porto Rican at nine miles on the head with a hammer, was committed to the grand jury by Judge Hapai on Tuesday.

Rev. S. L. Desha will leave for Honolulu tomorrow for the purpose of talking over land matters with the governor. He will campaign on Maui before returning to Hilo.

There will be a big Democratic rally at the hotel grounds at 7:30 Saturday night. Frank Woods, Governor Baker, T. J. Ryan and the candidates for representatives and others will speak. The sheriff has placed the accounts of the Owl Drug Co. in the hands of W. S. Wise for collection and all persons indebted to the company will call upon him without delay and settle.

Candidate Hewitt spoke at the fish-market Friday night and left Saturday morning for Pahala for the purpose of registering. He was back again Saturday night and spoke at the meeting at Papeaiku.

A Japanese confined in the Hilo jail and suffering from beri beri attempted suicide last Saturday but was discovered by the prison cook and prevented from doing himself any injury. He had a noose around his neck when the cook noticed him, preparing to jump.

A Portuguese driver in the employ of Hoffschlaeger & Co. was stopped by three Porto Ricans near Onomea on Monday night. The man shouted for assistance and was answered by a Japanese, and the men ran away. After securing help at the plantation the party went back but failed to find the Porto Ricans.

The Hilo railway shops are running as usual. There is no truth in the rumor that work has been suspended and that the shops are closed down.

Explain Their Defeat.

Members of the Honolulu Chess Club who took part in the wireless telegraph matches with the Hilo Chess Club explain that they resigned owing to errors made in transmission of moves. Their games were thus ruined while yet in hopeful state. Hilo did not tender the privilege of correction, as Honolulu did to Hilo in similar case early in the contests. As there is no more obligation to make such concessions in a correspondence game than exists in a match over the board, Honolulu is not kicking but only explaining.

LAME BACK.

This ailment is usually caused by rheumatism of the muscles and may be cured by applying Chamberlain's Pain Balm two or three times a day and rubbing the parts vigorously at each application. If this does not afford relief, bind on a piece of flannel slightly dampened with Pain Balm, and quick relief is almost sure to follow. For sale by all dealers and druggists. Benson, Smith & Co., Ltd., agents for Hawaii.

hilo and the candidates for Senators and Representatives on this island.

D. H. Case, one of the leading attorneys here, will leave by the Cluettian this evening on business and will return next Wednesday morning, at which time he will take up his case.

Hub J. W. Kalua, who has been ill during the past two weeks, is now convalescing.

THE LAW IN FOUR CASES

Appeals Are Dismissed By Supreme Court.

Four cases were determined by unanimous opinions of the Supreme Court rendered yesterday. In all the appeals were dismissed. The gist of each deliverance is given below.

MRS. PRATT WINS.

By a unanimous opinion of the Supreme Court, written by Justice Hartwell, the verdict for the plaintiff is sustained in the suit of Elizabeth K. Pratt vs. Y. Ahin and Yee Nam, partners under the firm name of Y. Ahin Co. The case was tried before Judge De Bolt. C. W. Ashford appeared for plaintiff, and Castle & Withington for defendants. The syllabus of opinion is as follows:

"Assignment of lease by consent of lessor, followed by acceptance of rent from the assignee, does not release the lessee from its covenant to pay rent, although the lease did not prohibit assignment, and the assignee was a partner in the lessee's firm.

"A verdict for the plaintiff for \$320 and interest at six per cent." is not invalid for uncertainty in an action of covenant for nonpayment of rent payable in semi-annual instalments, fixing the date from which to compute interest.

"Defense of payment is a question of fact for the jury, concerning which no question of law is raised by a general exception to the verdict as contrary to law and evidence."

The last part refers to a claim that \$150 was paid to the plaintiff's agent, which the agent in evidence denied, and the verdict was conclusive on that point.

KALANIANAOLE LOSES.

The suit of J. K. Kalaniana'ole vs. W. W. Dimond & Co., Ltd., assigning as error the order of the First Circuit Court in dismissing an appeal taken by the plaintiff in error from a judgment by default made against him by the district magistrate of Honolulu, C. W. Ashford and C. A. Long for plaintiff in error; Thayer & Hemenway for defendant in error. The law given is in effect that, though there is an appeal from a district magistrate, "the reasons, if any exist, for the removal of a default should be presented to the court which has ordered it." These words are adopted from a former Hawaiian decision, Luce vs. Chin Wa, 6 Haw. 629 (1886).

MATTER OF COMMISSIONS.

Justice Hatch writes the unanimous decision of the Supreme Court in the matter of the estate of August Kraft, deceased, sustaining Judge De Bolt in refusing to allow W. L. Howard, administrator, a commission of \$707.74, being five per cent. commission on the sum of \$14,154.75, the appraised value of the real and personal property elected to be taken by the legatees in lieu of the proceeds of the sale of such property.

It is found that the practice for thirty years in this jurisdiction, as well as the existing law on the subject, forbids the payment of commissions to administrators excepting upon the actual collection and disbursement of cash. On the hearing it was urged that the court should reverse the decision in the Kraft case, 3 Hawaiian 258, and follow the rule adopted in more recent cases in New York and some other States.

"The decisions in the different States are not uniform," the present decision comments. "Their statutes upon this subject differ in so many respects from ours that little aid can be gained from a consideration of the cases upon those statutes in any question of construction of our own statutes. Aside from this, however, we consider that where a rule has prevailed for so long a time in our own courts it should not be departed from unless a very conclusive case is made out for the adoption of a new rule. The statute is clear and positive in its terms, and scarcely allows room for difference of opinion in the construction of the same."

In conclusion, however, the court inclines to the view that the law might properly be changed, saying: "It would appear reasonable that an executor in cases like the present should receive some compensation for services both in the care of the real estate and in preparing for a sale. The court, however, is without authority to make an allowance. The only remedy is through the Legislature by an amendment of the statute."

LAND TITLE.

Judge De Bolt is sustained in a decision he made in the case of Maggie Fisher vs. Keukahi Wallehau and J. Alfred Magoon, by a unanimous opinion of the Supreme Court written by Justice Hatch. The appeal of the defendants is dismissed. E. M. Watson appeared for plaintiff; J. Alfred Magoon and J. Lightfoot for defendant Magoon. The syllabus explains the point decided, thus:

"A deed conveying fifty acres out of a larger tract or tracts, but not attempting to locate the parcel conveyed, takes effect as a conveyance of an undivided interest in the whole land and is not void for uncertainty. The interest conveyed is in the proportion that the number of acres conveyed bears to the number of acres in the whole land."